

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4682 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

B N JADAV

Versus

GUJARAT ELECTRICITY BOARD

Appearance:

MR DT SONI for Petitioner

MR VJ DESAI for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 29/07/97

ORAL JUDGEMENT

Heard the learned counsel for the parties.

2. The petitioner, a Helper in the Gujarat Electricity Board, 66 KV Sub-Station, Than, Dist. Surendranagar, filed this Special Civil Application before this Court and manifold prayers have been made, but during the course of arguments, the learned counsel for the petitioner has only restricted the case of the

petitioner on two counts i.e. regarding his promotion to the post of Assistant Lineman from the deemed date as well as his transfer to Dhangadhra (O&M) Division of Sabarmati Circle.

3. It is not in dispute that the petitioner has been promoted during the pendency of this Sp. C.A. on the post of Assistant Lineman in the year 1988. So far as the claim of the petitioner of seniority in the cadre of Helper in Sabarmati Circle is concerned, that has also been given to the him.

3. On 17th August, 1982, as per the case of the respondent No.2, the interviews were taken in which the petitioner had appeared, but he was not selected on merits whereas Shri R.H. Zala and B.R. Raval were selected. Shri Zala and Shri Raval are junior to the petitioner. They have been given the promotion on the post of Assistant Lineman under the order dated 22nd March, 1984 on the basis of selection on 17th August, 1982. Then next select list has been prepared on 5th December, 1984 and it comes out therefrom that the criteria for promotion was only seniority.

4. The learned counsel for the respondent-Board is unable to produce on record of this Sp. C.A. any G.S.O. or any other regulations framed by the Board laying down the criteria, eligibility etc. for promotion to the post of Assistant Lineman from the cadre of Helper. In the absence of any material on record, it is difficult to accept, only on the basis of what has been orally stated by the counsel for the respondents, that criteria for promotion on the post of Assistant Lineman was selection. It is first promotion and normally, it may not be a selection post. Be that as it may. From the select list prepared on 5th December, 1984, it is clearly borne out that the criteria for promotion was only of seniority. So it is no more in dispute that the criteria for promotion to the post of Assistant Lineman was only of seniority, and as such, the denial of promotion to the petitioner on the criteria of selection is arbitrary. The learned counsel for the respondents is unable to give out any ground good, bad or indifferent to exclude the name of the petitioner from the select list prepared on 5th December, 1984. So first grievance of the petitioner deserves acceptance.

5. So far as the second grievance of the petitioner regarding his transfer to Dhangadhra (O&M) Division of Sabarmati Circle is concerned, the counsel for the respondents very fairly submitted that the petitioner may

submit a representation, and if such a representation is made, then it will be considered in accordance with law.

6. In the result, this Special Civil Application succeeds in part. It is hereby declared that the exclusion of petitioner from promotion to the post of Assistant Lineman on 22nd March, 1984 when two persons junior to him were given the promotion is illegal and arbitrary. The respondent-Board is directed to consider the case of the petitioner for promotion on the criteria of seniority only with reference to the date 22nd March, 1984 and in case he is found suitable for promotion then he may be given the deemed date of promotion with all consequential benefits which follow therefrom. So far as the grievance of the petitioner for transfer is concerned, it is open to the petitioner to make a representation, and if such a representation is made, the respondent-Board shall consider the same sympathetically. The Special Civil Application and Rule stands disposed of in the aforesaid terms with no order as to costs.

zgs/-